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REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-FIRST SESSION

Report of Mr. F. Yimer, Chairman of the Sub-Commission, at its forty-first session, prepared in accordance with paragraph 15 of Commission on Human Rights resolution 1989/36

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Introduction

1. The Commission on Human Rights at its forty-fifth session adopted resolution 1989/36 of 6 March 1989, entitled "Work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities", in which it called upon the Sub-Commission, in the fulfilment of its functions and duties, to be guided by the relevant resolutions of the Commission and the Economic and Social Council. Resolution 1989/36 reiterated a number of guidelines for the work of the Sub-Commission which had been brought to the attention of the Sub-Commission by previous resolutions of the Commission, in particular resolution 1988/43 of 8 March 1988. In paragraph 15 of resolution 1989/36 the Commission requested the Chairman of the Sub-Commission to report to the Commission on the implementation of the guidelines which the Commission was providing in the said resolution. The present report is submitted by the Chairman of the Sub-Commission at its forty-first session to the Commission on Human Rights at its forty-sixth session pursuant to its above-mentioned request.

2. The guidelines provided in resolution 1989/36 can be grouped under the following headings: (a) Terms of reference and role of the Sub-Commission; (b) Methods of work; (c) Studies and reports and activities of special rapporteurs; (d) Standard-setting activities; (e) Consideration of new developments in the field of human rights; (f) Reslutions and decisions.

I. TERMS OF REFERENCE AND THE ROLE OF THE SUB-COMMISSION

3. The report of the Sub-Commission on its forty-first session which is before the Commission at its forty-sixth session in document E/CN.4/1990/2-E/CN.4/Sub.2/1989/58, reflects the breadth of the subjects brought to its attention for analysis, consideration and action by the Commission, Sub-Commission members, observer States and non-governmental organizations. Prevention of discrimination and protection of minorities continue to be themes which run through the Sub-Commission's activities, resolutions and decisions, whether they deal with measures to combat racism and racial discrimination, to eliminate intolerance and discrimination based on religion or belief, the right of everyone to leave any country, including his own, and to return to his country, or specific situations of violations of human rights. Also of serious concern to the Sub-Commission are issues relating to the protection of vulnerable groups such as indigenous peoples, minorities and persons subjected to any form of detention and imprisonment or suffering from contemporary forms of slavery. The protection of women and children against discrimination and exploitation is gaining increasing ground in the activities of the Sub-Commission. Finally the Sub-Commission's attention is focused on the drafting of new international standards and the consideration of the human rights aspects of new areas of concern.

4. In dealing with its items on the agenda, the Sub-Commission has borne in mind its complementary role in relation to the work of the Commission and other human rights bodies and tried to make its own contribution as a body of experts. The Sub-Commission has been pursuing many tasks in the above-mentioned fields and has also been undertaking new actions, particularly in the fields of contemporary forms of slavery, human rights of detainees, the right to development and the right to life. The Sub-Commission has also considered communications under Economic and Social Council resolution 1503 (XLVIII) and brought to the notice of the Commission

situations which it has reasonable cause to believe revealed a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms.

5. The Commission, in dealing with the Sub-Commission's terms of references and the role it could play in the totality of the human rights programme of the United Nations, has repeatedly underlined that the impartiality and objectivity of the Sub-Commission and the independent status of its members and their alternates were essential prerequisites for its effectiveness and credibility. Resolution 1989/36 reaffirmed that the Sub-Commission can best assist the Commission by providing it with recommendations based on the different views and perspectives of independent experts and called upon States to nominate as members and alternates persons meeting the criteria of independent experts. In performing its duties and tasks, the Sub-Commission has been guided, inter alia, by these directives.

6. At its forty-first session, under agenda item 3 "Review of the work of the Sub-Commission", members referring to comments and suggestions made by the Commission and the guidelines submitted to it in resolution 1989/36, raised the following issues as to the function of the Sub-Commission (see E/CN.4/Sub.2/1989/SR.2-4):

(a) The Sub-Commission should bear in mind its own identity as a body of independent experts or "think-tank". It should guard against falling into routine activites and instead seek out relevant new aspects for consideration;

(b) Following the guidelines in Commission resolution 1989/36 that the Sub-Commission shall concentrate its attention on those specific human rights issues on which it can make a distinctive contribution, discussion continued on the issue of how the Sub-Commission should handle questions relating to alleged violations of human rights, particularly those relating to agenda item 6 (see Working papers prepared by Messrs van Boven and Eide and Messrs Chernichenko and Treat: E/CN.4/Sub.2/1989/47 and 51). Referring to Commission resolution 8 (XXIII) of 16 March 1967, the proposal was made that the Sub-Commission should prepare for the use of the Commission a report containing information on violations of human rights from all available sources. The opinion was expressed that this report would not establish new procedures for the Sub-Commission but rather make more effective use of its present terms of reference and fulfil its functions and duties as a body of independent experts. Others held the view that resolution 8 (XXIII) had been adopted in 1967 when no international human rights instruments or the mechanisms set up under those instruments had come into existence. The Sub-Commission had always fully performed, as far as possible, the task it had been assigned in accordance with the public procedure for considering situations that revealed human rights violations and the confidential procedures established by Economic and Social Council resolution 1503 (XLVIII). The fact of having experts representing different regions, systems and civilizations showed clearly that the objective was to obtain the personal contribution of such experts thus implying a divergence of views which only a realistic dialogue and a spirit of understanding could bring to a consensus. By its decision 1989/104, the Sub-Commission decided to establish at its forty-second session, a sessional working group to prepare an overview and an analysis of the suggestions and proposals which have been made in order to enable the Sub-Commission to better discharge its responsibilities in dealing with violations of human rights and to submit to the

Sub-Commission its views and recommendations as to the possible advantages and disadvantages of the various suggestions and proposals referred to above, and to present its findings to the Sub-Commission.

(c) In the context of decisions 1989/101 and 105, regarding suspension of rule 59 to allow for voting by secret ballot at the forty-first session of the Sub-Commission, some members underlined the need to create separate rules of procedure for the Sub-Commission or to modify the present ones allowing the Sub-Commission to take action by secret ballot, if it considers it appropriate to do so. It should be recalled that a great deal of controversy and debate preceded the adoption of decisions 1989/101 and 105. There were members of the Sub-Commission who strongly held the view that suspension of rule 59 by way of rule 66 for resolutions relating to agenda item 6 was an inappropriate application of the latter rule. Since there was no consensus on the issue a vote had to be taken to resolve the controversy.

(d) The Sub-Commission also considered the subject, referred to in Commission resolutions 1989/46, 1989/47 and 1989/48, on the effective functioning of bodies established pursuant to United Nations human rights instruments as well as the role of special rapporteurs and other fact-finding and monitoring mechanisms established by the Commission on Human Rights, as one of the major elements in analysing, reporting and monitoring human rights. It adopted resolution 1989/11, in which the Sub-Commission recommended to the Commission to request the Secretary-General to consider convening not later than 1991 an international meeting of experts on issues related to the international monitoring in the field of human rights and inform the Sub-Commission at its forty-second session of his plans with regard to the organization, participation and background documentation (draft resolution I).

II. METHODS OF WORK

7. Noting the steps taken so far by the Sub-Commission to rationalize and streamline its work, the Commission encourages the Sub-Commission to continue this process.

8. In organizing the work of its forty-first session, the Sub-Commission was guided by the Commission's recommendations and encouraged by its appreciation of the results achieved at the fortieth session. Every effort was made to rationalize the consideration of the agenda items and to arrive at increased efficiency and reasonable methods of work. As mentioned above, the Sub-Commission began consideration of ways and means of streamlining its consideration of issues relating to violations of human rights and will continue to do so at its forty-second session (decision 1989/104).

9. Taking into account that the Sub-Commission is a useful forum for the contributions of non-governmental organizations in the field of human rights, the Chairman of the Sub-Commission wishes to express his gratitude to the non-governmental organizations for their increasing contributions to the work of the Sub-Commission providing it with information on all subjects on its agenda. The Chairman would also like to thank United Nations Member States for their growing interest in the activities of the body. It should be mentioned, however, that these positive and appreciated aspects give the Sub-Commission additional difficulties in organizing its work which will require in the future even more careful rationalization so that meetings of

the Sub-Commission can be organized in the most efficient way. At its forty-first session the Sub-Commission, in order to cope with these difficulties, had no other choice than imposing strict time limits for statements.

10. Regarding attendance, all members of the Sub-Commission were present for most of the session. When a member was unable to attend, he was, as a rule, replaced by his alternate. The deliberations were carried out with a broad exchange of individual views based on knowledge and experience.

11. With regard to the conduct of meetings, all members of the Sub-Commission did their utmost to ensure that the time allotted to the meetings of the Sub-Commission was effectively utilized. In addition to formal meetings, members of the Sub-Commission also worked in informal meetings to expedite the work of the Sub-Commission in the most economical way.

12. The Sub-Commission recognized that working groups constitute an invaluable element in the expert work of the Sub-Commission, particularly in standard-setting activities. This has been well demonstrated by the three pre-sessional Working Groups on Communications, Contemporary Forms of Slavery and on Indigenous Populations and the sessional Working Group on Detention. At its forty-first session, the Sub-Commission decided to establish two additional sessional working groups at its forty-second session, dealing with the preparation of a revised version of the draft declaration on freedom and non-discrimination in respect of the right to leave (resolution 1989/25) and the preparation of an overview and analysis of the suggestions and proposals which have been made to enable the Sub-Commission to deal better with violations of human rights discussed under item 6 (decision 1989/104). Furthermore, in its resolution 1989/34, it recommended to the Commission that the Working Group on Indigenous Populations be authorized to meet in 1990 and 1991 for 10 working days with a view to intensifying efforts to complete a draft universal declaration on indigenous rights.

III. STUDIES AND REPORTS AND ACTIVITIES OF SPECIAL RAPPORTEURS

13. Resolution 1989/36 reaffirmed that the systematic preparation of well-researched studies and reports continued to be one of the most important elements of the expert work of the Sub-Commission and of its contribution to the work of the Commission. The Commission reminded the Sub-Commission that a new study could only be proposed when a study previously authorized had been fully completed. The special rapporteurs were anew urged to submit their reports by the deadline given by the Secretariat so that those reports could be available in all languages well before the meeting.

14. At its forty-first session, the Sub-Commission completed consideration of a number of reports by special rapporteurs: the study by Mr. Eide on the achievements made and obstacles encountered during the Decades to Combat Racism and Racial Discrimination (E/CN.4/Sub.2/1989/8 and Add.1); the report by Mr. Mubanga Chipoya on the current trends and development regarding the right of everyone to leave any country, including his own, and to return to his country (E/CN.4/Sub.2/1988/35 and Add.1 and Add.1/Corr.1); the reports (E/CN.4/Sub.2/1989/35, (Part I and Add.1 and Part. II)) submitted by Mrs. Daes and Mr. Carey on the relocation of Hopi and Navajo families and the study by Mrs. Daes on the status of the individual and contemporary international law (E/CN.4/Sub.2/1989/40). By its resolution 1989/19, the Sub-Commission

submitted the report by Mr. Eide for further consideration to the Commission on Human Rights and decided to consider further, at its forty-second session, the recommendations made by the Special Rapporteur and their implementation. By its resolution 1989/46, it submitted the report by Mrs. Daes on the status of the individual and contemporary international law to the Commission and recommended that it be published and widely disseminated (draft resolution XIV).

15. Annex III of the report of the Sub-Commission on its forty-first session (E/CN.4/1990/2 - E/CN.4/Sub.2/1989/58) contains a list of the studies and reports under preparation and a list of new studies suggested to be prepared subject to approval by the Economic and Social Council. As the annex shows, the Sub-Commission at its forty-first session initiated four new studies; (a) on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights (resolution 1989/13); (b) on the right to freedom of opinion and expression (resolution 1989/14); (c) on problems and causes of discrimination against HIV infected people or people with AIDS (resolution 1989/17) and (d) on possible ways and means of facilitating the peaceful solution of problems involving minorities (resolution 1989/44). In addition, the Sub-Commission continued a number of studies and reports of special rapporteurs which had been authorized in the past.

16. Further, as also reflected in annex III of the report, the Sub-Commission continued its tradition of proceeding with reports under preparation with no financial implications. An unprecedented number of seven new reports and working papers which the Sub-Commission considered important for its future work were entrusted to members of the Sub-Commission at its forty-first session, without any financial implications. The subjects of these reports are: the protection of journalists, the right to a fair trial, the human rights of detained juveniles, the interrelationship between peace and human rights, human rights and environment, the issue of privatization of prisons, and the means of monitoring by the Sub-Commission which would assist in ensuring respect for the independence of the judiciary.

17. As for the report on human rights and youth, the Sub-Commission had before it a report presented by the Special Rapporteur, Mr. Dumitru Mazilu (E/CN.4/Sub.2/1989/41 and Add.1). By its resolution 1989/45, the Sub-Commission requested the Special Rapporteur to update his report in the light of the discussion during the forty-first session of the Sub-Commission and the information already collected for him by the Secretary-General and any other pertinent information, and invited the Special Rapporteur to present his updated report personally to its forty-second session. The Secretary-General was requested to continue to gather and furnish to Mr. Mazilu information relating to his study, and to provide him with all assistance he might need in updating his report.

18. As to the issue of reports and studies undertaken by the Sub-Commission, the Sub-Commission adopted decision 1989/103, in which it decided to examine at its forty-second session ways and means of rationalizing proposals for studies and to consider the possibility of drawing up a medium-term programme that would ensure the participation of the greatest number of members of the Sub-Commission in this programme.

IV. STANDARD-SETTING ACTIVITIES

19. The Commission requested the Sub-Commission to give priority to those topics on which standards are being prepared, in accordance with decisions taken by the Commission and within the time frames set by the Commission. In this context the Chairman of the Sub-Commission wishes to draw the attention of the Commission to Sub-Commission resolutions 1989/25 and 1989/34.

20. By its resolution 1989/25, the Sub-Commission decided to establish, at its forty-second session, a sessional open-ended working group with the view to preparing a revised version of the draft declaration on freedom and non-discrimination in respect of the right of everyone to leave any country, including his own, and to return to his country.

21. By resolution 1989/34, the Sub-Commission entrusted the Chairman-Rapporteur of the Working Group on Indigenous Populations to prepare a second revised text of the draft declaration on indigenous rights and recommended that the Working Group be authorized to meet for 10 days prior to the forty-second and forty-third sessions of the Sub-Commission for the purpose of intensifying its efforts to complete the said draft declaration.

V. CONSIDERATION OF NEW DEVELOPMENTS IN THE FIELD OF HUMAN RIGHTS

22. In its resolution 1989/36, the Commission again stressed the valuable role that the Sub-Commission, as a body of independent experts, can play in addressing new developments in the field of human rights and also in providing a forum for the contributions of non-governmental organizations, and invited the Sub-Commission to continue to give due regard to new developments in the field of human rights.

23. As in the past, at its forty-first session the Sub-Commission discussed the reports submitted by the International Labour Organisation (E/CN.4/Sub.2/1989/6) and the United Nations Educational, Scientific and Cultural Organization (E/CN.4/Sub.2/1989/7), providing information on developments in their recent activities. The Sub-Commission also considered the reports of the Secretary-General on the movement and dumping of toxic and dangerous products and wastes (E/CN.4/Sub.2/1989/3) and on respect for the right to life: elimination of chemical weapons (E/CN.4/Sub.2/1989/4).

24. The Sub-Commission, at its forty-first session, focused its consideration on new developments in the actual human rights situation in a number of countries based on information submitted to it by members of the Sub-Commission and non-governmental organizations. In particular, it considered, and took action upon, such situations in South Africa (resolutions 1989/3 and 1989/18), in the Palestinian and other Arab territories occupied by Israel (resolution 1989/4), in China (1989/5), in Guatemala (1989/6), in East Timor (1989/7), in Lebanon (1989/8, 1989/26 and 1989/29), in El Salvador (1989/9), in Iran (1989/10), in Paraguay (1989/15) and in Iraq (decision 1989/106).

25. Furthermore the Sub-Commission continued consideration of, and took action on, new areas where developments warranted expert human rights input and which had come to its attention, at its previous sessions, namely the human rights monitoring mechanisms established within the United Nations framework (resolution 1989/11), compensation for victims of gross violations

of human rights (resolution 1989/13), discrimination against people with AIDS (resolution 1989/17), protection of human rights of United Nations staff members (resolution 1989/30), the elimination of chemical weapons (resolution 1989/39), and the protection of minorities (resolution 1989/44).

26. Having in mind the relevant request of the Commission in its resolution 1989/36, the Sub-Commission has given due regard to new developments such as the protection of journalists (resolution 1989/2), the relationship between foreign debt strategy, the revival of economic growth and development of developing countries and the enjoyment of human rights (resolution 1989/21), the protection of human rights in armed conflicts (resolution 1989/24), the prevention of hostage-taking (resolution 1989/26), the right to a fair trial (resolution 1989/27) and the prevention of sale of children, child prostitution and child pornography (resolutions 1989/42 and 43). Mention in this context may also be made of resolutions dealing with the application of international standards concerning the human rights of detained juveniles (resolution 1989/31), application of the death penalty to persons under 18 years of age (resolution 1989/32), the use of force by law enforcement officials (resolution 1989/33), and human rights and the environment (decision 1989/108).

VI. RESOLUTIONS AND DECISIONS

27. The Commission invited the Sub-Commission to give due consideration to draft resolutions proposed for adoption and to seek the widest possible measure of agreement on them, bearing in mind that such resolutions should be proposed only on such subjects as had been thoroughly discussed in the Sub-Commission or in its working groups and should be consistent with the role of the Sub-Commission or its working groups and the role of the Sub-Commission as a body of independent experts. Further, the Commission urged the Sub-Commission when examining items which are extensively discussed elsewhere in the United Nations system, to concentrate attention on those specific human rights issues on which it can make a distinctive contribution.

28. In the drafting of resolutions, decisions or any other proposals, members of the Sub-Commission have endeavoured to find the widest possible agreement on them before tabling them. As reflected in the Sub-Commission's report, 45 resolutions and decisions out of 60 were adopted without a vote, which tends to illustrate the efforts made by the Sub-Commission to work in harmony and in a most constructive manner to carry out its tasks.

29. In this regard chapter II, sections A and B, of the report of the Sub-Commission contains 47 resolutions and 13 decisions adopted at its forty-first session. The attention of the Commission may be drawn especially to chapter I, sections A and B respectively, containing 14 draft resolutions and four draft decisions recommended by the Sub-Commission for adoption by the Commission. Section C of the same chapter refers to eight resolutions and six decisions referring to matters which are drawn to the Commission's attention and which require consideration or action by the Commission.